

**PT 01-69**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

---

---

**WHEATON CHRISTIAN  
CENTER CHURCH,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

---

---

**No. 00-PT-0078  
(00-22-0076)  
P.I.N: 05-04-200-011**

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Robert Jones of Huck, Martin, Jones & Bradshaw, P.C. for the Wheaton Christian Center Church (hereinafter the “applicant”); Mr. Robert G. Rybica, Assistant State’s Attorney for the County of DuPage for the DuPage County Board of Review (hereinafter the “Board”)

**SYNOPSIS:** This matter raises the following issues: (1) whether any part of the building improvement situated on real estate identified by DuPage County Parcel Index Number 05-04-200-011 (hereinafter the “subject property”) was “used exclusively for religious purposes,” as required by Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.*, (hereinafter the “Code”) during the 2000 assessment year; and, (2) whether the parking area, also situated on the subject property, was used for purposes that would qualify it for exemption from 2000 real estate taxes under Section 15-125 of the Code. The underlying controversy arises as follows:

Applicant filed an Petition for Property Tax Exemption with the Board (hereinafter the “Board”) on April 14, 2000. The Board reviewed applicant’s petition and recommended to the Illinois Department Of Revenue (hereinafter the “Department”) that the requested exemption be granted. The Department then issued its determination in this matter, finding that the subject property is not in exempt use, on September 8, 2000.

Applicant filed an appeal as to this denial and later presented evidence at a formal evidentiary hearing. Following a careful review of the record made at that hearing, I recommend that the Department’s determination be modified to reflect that: (a) 45% of the building improvement be exempt from real estate taxation for 69% of the 2000 assessment year under 35 **ILCS** 200/15-40; and, (b) 100% of the parking area be exempt from real estate taxation for the entire 2000 assessment year under 35 **ILCS** 200/15-125.

**FINDINGS OF FACT:**

1. The Department’s jurisdiction over this matter and its position herein, are established by the admission of Dept. Ex. Nos. 1, 2, 3.
2. The Department’s position in this case is that the subject property is not in exempt use. Dept . Ex. No. 1.
3. Applicant is an Illinois not for profit corporation organized for purposes of promulgating the Christian Faith, as set forth in the Old and New Testaments, through the establishment and operation of a church facilities and other related activities. Applicant Ex. Nos. 1, 2 and 3.
4. The subject property is located at 610 E. North Ave, Carol Stream, IL and improved with: (a) a one story, 121,000 square foot building that was formerly used as a K-

Mart; and, (b) an 829-space parking facility designed to service that building. Dept. Ex. No. 3; Applicant Ex. Nos. 7, 11, 18; Tr. p. 30.

5. The subject property is located approximately one mile away from applicant's original church facility, which was exempted from real estate taxation pursuant to the Department's determination in Docket Number 83-22-61. Tr. pp. 18, 22; Administrative Notice.
6. Applicant purchased the subject property, which it acquired via a warranty deed dated October 3, 1997, because its original church facility had become inadequate for its needs. Applicant Ex. No. 5; Tr. p. 18.
7. Applicant acquired the subject property with the intention of converting the entire building improvement into a main church complex that would suit its expanding needs. It could not begin the converting the building immediately upon acquiring ownership due to various legal and practical constraints, including internal budgetary limitations and lack of necessary permits. Applicant Ex. Nos. 11, 12, 14; Tr. pp. 37-38.
8. Applicant did nonetheless begin to use the parking area for various outdoor church celebrations, and as a satellite parking facility for its existing church, immediately after the date of purchase. Applicant Ex. No. 7; Tr. pp. 27-29.
9. The satellite parking facility was serviced by a shuttle van, which took parishioners to and from applicant's existing church. Tr. p. 22.
10. Applicant and the Board have stipulated that applicant used the entire parking area as a satellite parking facility for its existing church facility throughout the 2000 assessment year. Tr. p. 68.

11. The building improvement was abandoned and required extensive structural renovations as of the purchase date. Applicant could not afford to make many of the necessary renovations due to budget constraints. It was, however, able to devise a simplified plan for executing the initial phase of what would eventually become a larger renovations project. Applicant Ex. Nos. 10, 11; Tr. p. 33.
12. The initial phase focused on applicant's most immediate needs and included plans for constructing the space that would enclose that 45% of the building which was to be used as applicant's main sanctuary/assembly hall as well as provide space for the toilet facilities, entrances and exits that would service same. Applicant Ex. Nos. 11, 21; Tr. pp. 50, 52.
13. The Village of Carol Stream would not issue a building and use permit allowing applicant to proceed with these renovations until it was satisfied that applicant would make them in compliance with applicable building code requirements. Applicant Ex. Nos. 11, 14.
14. The Village did not issue applicant the requisite permit until April 25, 2000. Applicant Ex. No. 20.
15. Applicant began making substantial roof repairs and other renovations, which included removing asbestos and installing a fire alarm system, immediately upon receiving its building use permit. App. Ex. Nos. 14, 15, 16, 19.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting: (a) 45% of the 121,000 square foot building improvement situated on

the subject property from real estate taxation for 69% of the 2000 assessment year under 35 ILCS 200/15-40; and, (b) 100% of the 829-space parking area situated on the subject property from real estate taxation for the entire 2000 assessment year under 35 ILCS 200/15-125. Accordingly, under the reasoning given below, the determination by the Department that the entirety of said property was not in exempt use throughout the 2000 assessment year should be modified. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Sections 15-40 and 15-125 of the Property Tax Code 35 ILCS 200/1-1 *et seq.* Section 15-40 provides, in relevant part, for exemption of the following:

All property used exclusively<sup>1</sup> for religious purposes,<sup>2</sup> or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit ...[.]

35 ILCS 200/15-40.

Section 200/15-125 provides that:

Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this

---

1. The word "exclusively," when used in Sections 200/15-40 and other exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

2. As applied to the uses of property, "religious purposes" refer to those uses by religious societies or persons as stated places for public worship, Sunday schools and religious instruction. People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

Code and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption, are exempt [from real estate taxation].

35 ILCS 200/15-125.

Statutes conferring property tax exemptions are to be strictly construed, with all facts construed and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, it is applicant that bears the burden of proving, by clear and convincing evidence, that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

Here, the relevant statute provides that parking areas, such as the one located on the subject property, can be exempted from real estate taxation if they are: (1) owned by a school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption set forth in the applicable section(s) of the Code; (2) not leased or otherwise used with a view to profit; and (3) used as part of a use for which an exemption is provided in the Code. 35 ILCS 200/15-125. Only the last requirement is at issue herein, as the instant denial was predicated solely on lack of exempt use.

The adversarial parties whose pecuniary interests are affected by the outcome of this case entered into an on-the-record stipulation which establishes the factual basis for concluding that the parking area was in exempt use throughout 2000. (Tr. p. 68). In accordance with that stipulation, I conclude that the Department's determination concerning the parking area should be reversed *in toto*.

The parties entered into no such stipulation concerning the building improvement. Therefore, any conclusions as to the extent of its exempt use must be drawn from the application of the appropriate legal principles to the facts established at hearing.

Such facts clearly indicate that, all through 2000, applicant intended to develop the entire building for use as a church facility that would suit the expanding needs of its congregation. Nonetheless, applicant's actual, rather than intended use, is determinative on the question of exempt use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). Therefore, applicant's mere intention to use the entire building for ostensibly "religious" purposes is legally insufficient to satisfy the statutory exempt use requirement. *Id.*

Furthermore, whatever efforts applicant made to develop the building for its intended purpose must be viewed in light of the realities of modern construction and applicant's ultimate intended use. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987); Lutheran Church of the Good Shepherd of Bourbonnais v. Illinois Department Of Revenue, 316 Ill. App.3d 828, 834 (3<sup>rd</sup> Dist. 2000). This is especially true where, as here, applicant was required to demonstrate conformity with applicable legal restrictions before proceeding with construction.

Those restrictions were imposed by the Village of Carol Stream and required that applicant obtain a building and use permit before proceeding with any of its planned renovations. The Village did not issue applicant this permit until April 25, 2000. Consequently, it was legally impossible for applicant to actually implement any of its planned building renovations until that date. For this reason, the period of exempt use for

the building improvement is hereby limited to that 69% of the 2000 assessment year which transpired on or after April 25, 2000.

Furthermore, the realities of modern construction dictate that applicant's plan to transform a sizeable, yet vacant and dilapidated, commercial building into a multifaceted church complex is inherently complex in the first instance and highly costly in the second. *Accord, Weslin Properties, supra.* While applicant did not have the financial resources to bring the entirety of its ambitious plans into fruition in 2000, it was able to initiate execution of a more limited plan for construction of its new sanctuary and facilities related thereto.

It is well established that where real estate is used for multiple purposes, and can be divided according to specifically identifiable areas of exempt and non-exempt use, it is proper to exempt those parts that are in actual, exempt use and subject the remainder to taxation. *Illinois Institute of Technology v. Skinner*, 49 Ill. 2d 59, 64 (1971). Business realities forced this applicant to limit the scope of its renovations to that 45% of the building wherein its main sanctuary and related facilities were to be built during the period in question. Hence, its prospects for engaging in actual development of the remaining 55% were speculative throughout that time.

The uncertainties associated with such speculation raise doubts about the viability of applicant's plans for that 55%. Such doubts must be resolved in favor of taxation. *People ex rel. Nordland v. Home for the Aged*, 40 Ill.2d 91 (1968); *Gas Research Institute v. Department of Revenue*, 154 Ill. App.3d 430 (1st Dist. 1987). Furthermore, each tax year constitutes a separate cause of action for exemption purposes. *People ex rel. Tomlin v. Illinois State Bar Ass'n*, 89 Ill. App.3d 1005, 1013 (4<sup>th</sup> Dist. 1980). Therefore,



the fact that applicant may have developed a more concrete plan for developing, or actually did develop, the remaining 55% in tax years other than the one currently in question is of no legal significance herein.

The case of Mount Calvary Baptist Church v. Zehnder, 302 Ill. App. 3d 661 (1<sup>st</sup> Dist. 1998), cited by applicant, does not alter any of the preceding conclusions. There, the court considered whether a church building that had suffered severe structural damage in a fire could qualify for exemption under the then-existing version of Section 15-40.<sup>3</sup> The church had been regularly used for exempt purposes prior to the tax year in question. However, those uses were severely curtailed throughout the relevant period due to damage from the fire. Mount Calvary at 666-670.

The court held the church exempt. In doing so, the court was careful to point out that the church was one “which but for the [intervening] fire, presumably would have continued to be used, *as it had been for years*, as a place of worship.” Mount Calvary at 669 (emphasis added). Here, the building applicant is seeking to exempt was vacant, and therefore not used as a house of worship or for any other ostensibly “religious” purpose, prior to the period in question. Due to this lack of pre-existing exempt use, it cannot be presumed that this applicant would have enjoyed uninterrupted “religious” use of the entire building throughout that period. Therefore, Mount Calvary is not controlling herein.

Furthermore, unlike Mount Calvary, this case is *not* one wherein a single, unforeseen catastrophic event affirmatively prevented applicant from effectuating exempt use of the entire building. Rather, it is one in which complex business realities and

---

3. That version (which for present purposes is substantially identical to Section 15-40) was found in Section 19.2 of the Revenue Act of 1939, Ill. Rev. Stat. ch. 120, ¶¶ 482-811, 500.2.

applicant's internal fiscal limitations combined to limit the developmental process to one specific project.

Applicant is entitled to receive an exemption for that portion of the building wherein that project was being carried out. Illinois Institute of Technology, *supra*; Weslin Properties, *supra*. It is not, however, entitled to receive an exemption for those portions which were neither in pre-existing exempt use nor the subject of that project. *Accord*, People ex rel. Pearsall v. Catholic Bishop of Chicago 311 Ill. 11 (1924) (holding that only those portions of a large tract actually being developed for seminary-related purposes during relevant tax year were in exempt use).

Based on the foregoing, I conclude that 45% of the building was in exempt use during the period in question. Consequently, the Department's determination concerning the building should be reversed as to that 45% but otherwise affirmed. Furthermore, pursuant to the parties' stipulation, that portion of the determination which pertains to the parking area should be reversed *in toto*. Therefore, said determination should be modified accordingly.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that:

- A. 45% of the building improvement situated on real estate identified by DuPage County Parcel Index Number 05-04-200-011 be exempt from real estate taxes for 69% of the 2000 assessment year under Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.*;
- B. The remaining 55% of said improvement not be so exempt, and therefore, remain on the tax rolls for the entire 2000 assessment year;

- C. The entire parking area situated on real estate identified by DuPage County Parcel Index Number 05-04-200-011 be exempt from real estate taxes for the entire 2000 assessment year under Section 15-125 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

10/19/01

Date

---

Alan I. Marcus  
Administrative Law Judge